



February 5, 1998

David F. Brown
Attorney

SBC Communications Inc.
175 E. Houston Street
12th Floor
San Antonio, Texas 78205
Phone 210 351-3478
Fax 210 351-3630
Email: dbrown@corp.sbc.com

EX PARTE OR LITE FILED

HAND DELIVERED

Ms. Magalie Roman Salas
Secretary
Federal Communication Commission
1919 M Street, N.W.
Washington, D.C. 20554

RECEIVED

FEB - 5 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: In the Matter of Telephone Number Portability,
CC Docket No. 95-116

Cost Recovery Issues

Dear Ms. Salas:

SBC Communications Inc., together with its subsidiaries, Southwestern Bell Telephone Company, Pacific Bell, and Southwestern Bell Mobile Systems (collectively, "SBC"), have consistently and repeatedly urged the Commission to adopt expeditiously an order permitting telecommunications carriers to recover their costs for the deployment and ongoing provision of number portability.¹ As SBC has emphasized, the implementation of number portability involves network changes on a scale never before attempted in the telecommunications industry. Equal in scale to the network challenges, however, are the costs and expenses that carriers have incurred and will continue to incur to implement number portability in accordance with the mandates of the Telecommunications Act of 1996 (the "1996 Act") and the Commission. Expeditious, competitively neutral cost recovery is, therefore, essential.

In an attempt to assist the Commission in reaching a legally correct and policy-supported decision, SBC has presented detailed mechanisms by which the Commission could implement competitively neutral number portability cost recovery. Primary among SBC's proposals has been the institution of a fully federal, Commission-determined mechanism. In support, SBC has demonstrated that the Commission has complete authority to determine the appropriate mode of

¹ See section 3(30) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.S.C. § 153(30).

No. of Copies rec'd
List ABOVE

022

competitively neutral cost recovery.² The United States Court of Appeals for the Eighth Circuit has confirmed the existence of this power, noting that section 251(e) of the 1996 Act provides the Commission with a "direct and unambiguous grant[] of intrastate authority."³ In addition, because of the Commission's exercise of complete authority over the deployment of number portability technology, the States have had little or no control over the timing, technology, or ongoing administration of the deployment of number portability.

In the face of these unmistakable jurisdictional premises, however, the Commission staff have inquired as to the propriety of a jurisdictionally split mechanism.

SBC thinks it contrary to the express terms of the 1996 Act, inconsistent with the Commission's actions and orders implementing the 1996 Act's number portability provisions, and inadvisable as a policy matter for the Commission to send any part of number portability cost recovery to the States. To the extent that the Commission nevertheless determines to send any portion of number portability costs to the States for recovery, the Commission must "determine" a mechanism that avoids uncertainty in recovery in order to meet the 1996 Act's requirement of competitive neutrality. The Commission must, therefore, specifically determine the mechanism that the States are required to use to allocate costs and to permit their recovery.

A critical element in applying a federal-to-State delegation mechanism, however, is the institution of a "safety valve" that avoids the legal problems associated with a State's failure or refusal to act in response the Commission's mandate. An example of such a mechanism may be found in section 252(e)(5) of the 1996 Act relating to a State commission's duty to review interconnection agreements and to arbitrate timely any disputes between interconnecting carriers. A Commission-action-based "safety valve" is needed not only to ensure that the operative provisions of the FCC's number portability cost recovery order comport with the Commission's own competitive neutrality standard, but also in the interest of federalism.

Accordingly, although SBC continues to have concern over the legal validity and efficacy of any less-than-fully-federal allocation and recovery mechanism, there can be little argument with our contention that any Commission order must include a deadline by which a State commission must act to implement recovery of any State-allocated number portability costs. It is clear that the Commission must provide in its order on number portability cost recovery a safety valve to ensure action in the event that a State commission fails to provide for recovery within the Commission's specified parameters. SBC recommends that a State be given ninety (90) days from the date of the Commission's adoption of a number portability cost recovery order—

² See SBC Comments, Reply, and ex parte letters (see, e.g., letters of August 5, 1997, September 8, 1997, September 22, 1997, and September 29, 1997).

³ *Iowa Utilities Board v. FCC*, 120 F.3d 753 (8th Cir. 1997), petitions for cert. pending; *California v. FCC*, 124 F.3d 934 (8th Cir. 1997).

a date that will in many instances post-date implementation of number portability in Phase I MSAs—to implement new service rate elements that permit intrastate recovery of number portability costs. In the event a State fails to act timely, the number portability cost recovery order should also retain Commission jurisdiction to implement a federal new service rate element that recovers State-allocated number portability costs.

The mechanism prescribed for this safety valve should, as well, be consistent with the mechanisms advocated in SBC's comments and ex partes in this docket, including the option to use both end-user and query-based rate elements. It is imperative that the mechanism the Commission implements permits not only recovery from carriers, but also, at the option of a given telecommunications carrier that incurs number portability costs, from end users.

Very truly yours,

A handwritten signature in black ink, appearing to read "David F. Brown", with a long, sweeping horizontal line extending to the right.

David F. Brown
Senior Counsel

cc: Mr. Kyle Dixon
Mr. Kevin Martin
Mr. Paul Gallant
Mr. Thomas Power
Mr. James Casserly
Mr. Richard Metzger
Mr. James Schlichting
Mr. Patrick Donovan